

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ANDERSON/GREENWOOD DIVISION

## OPINION AND ORDER

Marcus Vickers,

Defendant.

This matter is before the Court for review of the Report and Recommendation of United States Magistrate Judge Jacquelyn D. Austin made in accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 for the District of South Carolina. On April 24, 2019, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending that the parties’ motions for summary judgment (ECF Nos. 12 & 21) be granted on the issue of whether the Court should appoint an umpire to resolve the differences between the parties’ appraisers regarding the amount of loss to which Defendant is entitled under the homeowner’s insurance policy in question. (See ECF No. 29 at 5-7.) This issue is uncontested between the parties, and the Court grants the motions for summary judgment accordingly. The Magistrate Judge also recommended that the Court direct the parties to submit *ex parte* lists of umpire candidates, from which the Court could choose the umpire who will ultimately resolve the disputed valuation of loss. (*Id.* at 7.) The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report. No objections were filed. *Pro se* Defendant Marcus Vickers subsequently replied with a list of umpire candidates. (ECF No. 33.)

### **STANDARD OF REVIEW**

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court must make a *de novo* determination of those portions of the Report, or specified proposed findings or recommendations to which specific objection is made. 28 U.S.C. § 636(b)(1)(C). The Court may accept, reject, or modify, in whole or in part, the Report or may recommit the matter to the Magistrate Judge with instructions. *Id.* In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *De novo* review is also “unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

Neither party filed objections and the time for doing so expired on May 8, 2019. In the absence of objections to the Magistrate Judge’s Report, this Court is not required to provide an explanation for adopting the recommendation. See *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Rather, the Court need only satisfy itself that there is no clear error on the face of the record. *Diamond*, 416 F.3d at 315. Pro Se Defendant Marcus Vickers, submitted a list of umpire candidates (ECF No. 33) as suggested by the Magistrate Judge. Plaintiff, in its motion for summary judgment (ECF No. 12) and in its

response to the Defendant's motion for summary judgment (ECF No. 26), requests that the Court name Jeff Shelley as the umpire for this action, but did not make another submission.

After thorough review of the Report, the record, and the applicable law, the Court finds no error. Accordingly, the Report is adopted and incorporated herein by reference. It is therefore ORDERED that the parties' summary judgment motions (ECF Nos. 12 & 21) are GRANTED.

It is further ORDERED that Mr. Gene 'Wesley' Barber of Carolina Claims Consulting, is appointed as umpire in this matter. The parties bear responsibility for contacting Mr. Barber at 844-232-5246, [wesley@carolinaclaimsconsulting.com](mailto:wesley@carolinaclaimsconsulting.com), 227 West 4th Street, Charlotte, North Carolina 28202. The parties further bear responsibility for notifying the Court when the disputed insurance matters are resolved and this case can be dismissed.

**IT IS SO ORDERED.**

/s/Bruce H. Hendricks  
United States District Judge

July 2, 2019  
Charleston, South Carolina

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#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.